

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

EDWARD SEALS,)	
)	
Petitioner/Defendant,)	
)	CIVIL NO. 08-cv-0080-MJR
vs.)	
)	CRIMINAL NO. 01-cr-30140
UNITED STATES of AMERICA ,)	
)	
Respondent/Plaintiff.)	

MEMORANDUM AND ORDER

REAGAN, District Judge:

This matter is before Court for a preliminary review of Petitioner’s motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. *See* Rule 4(b) of the Rules Governing § 2255 Proceedings in the United States District Courts. This Court must summarily dismiss the instant motion “[i]f it plainly appears from the motion, any attached exhibits, and the record of prior proceedings, that the moving party is not entitled to relief.” *Id.*

Background.

On August 23, 2002, Petitioner was found guilty, after a jury trial, of bank robbery and using a firearm during and in relation to a crime of violence. *United States v. Seals*, No. 01-cr-30140 (S.D. Ill.) (Jury verdicts C and D, Docs. 175 and 176). On December 3, 2002, this Court imposed a sentence of 360 months incarceration, 5 years supervised release, a special assessment of \$200.00 and restitution of \$42,169.87. *Id.* (Doc. #213). Petitioner’s sentence was enhanced because the Court found that he was a career offender under § 4B1.1 of the Sentencing Guidelines. On direct appeal, Petitioner challenged evidentiary rulings made by the Court, his § 4B1.1 sentence

enhancement, and the order of restitution. *See United States v. Seals*, 419 F.3d 600 (7th Cir. 2005). The Seventh Circuit affirmed the Court's evidentiary ruling and the order of restitution, but ordered a limited remand to this Court regarding Petitioner's sentence in light of *United States v. Paladino*, 401 F.3d 471 (7th Cir. 2005). *Id.* at 610.

On remand, this Court advised the Court of Appeals that Petitioner's sentence would have been no different had Petitioner been sentenced after *United States v. Booker*, 543 U.S. 220 (2005). *United States v. Seals*, No. 01-cr-30140 (S.D. Ill.) (Memorandum and Order, Doc. 283). On March 2, 2006, the Seventh Circuit affirmed Petitioner's sentence. *United States v. Seals*, 170 Fed. Appx. 421 (7th Cir. 2006).

On May 1, 2006, the Supreme Court of the United States denied Petitioner's application for a writ of certiorari. *Seals v. United States*, 126 S. Ct. 1933 (2006). On June 5, 2006, the Supreme Court denied Petitioner's request for a rehearing. *Seals v. United States*, 126 S. Ct. 2376 (2006).

The motion.

On February 2, 2008, Petitioner filed the instant motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. In his motion, Petitioner asserts only one ground for relief: that based on changes made to the Sentencing Guidelines in November 2007, he is no longer considered a career offender and, therefore, his sentence should be accordingly reduced.

Disposition.

The Court **ORDERS** the Government to file a response to Petitioner's motion within **THIRTY (30) DAYS** of the date of this Order. The Government shall, as part of its response, attach all relevant portions of the record. Additionally, the Government shall specifically address whether Petitioner's § 2255 motion is timely filed.

IT IS SO ORDERED.

DATED this 26th day of November, 2008.

s/ Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge